

**REMARKS/ARGUMENTS**

Claims 11-14 and 18-24 are pending in the application with claims 21, 23 and 24 having been previously withdrawn from consideration. Claims 11-14, 18-20 and 22 were examined and rejected. The claims have been amended as noted above in the Amendments to the Claims section. Reconsideration and reexamination of the claims as amended and in view of the following remarks are respectfully requested.

Claims 11, 14, 18-20 and 22 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,193,648 to Krueger (hereinafter "Krueger"). Such rejections are traversed in part and overcome in part as follows.

Before amendment, independent claim 11, from which claims 14, 18-20 and 22 depend, recited the limitation of "wherein the band is configured to leave a gap between the first and second ends." Krueger fails to teach or suggest this limitation.

Krueger describes a jacket which conforms to the external geometry of the heart and constrains the heart within its volume (abstract; col. 3, ln. 43-63; col. 6, ln. 33-35, 48-50; col. 7, ln. 47-49). The jacket constrains further undesirable circumferential enlargement of the heart, which can reduce the heart's ability to pump blood (col. 1, ln. 16-30; col. 7, ln. 47-49). As can be seen in Figs. 3, 3A, 4, 4A, 6 and 7, the jacket constrains the heart by being wrapped completely around its circumference, leaving no gap between the ends of the jacket. Indeed, Krueger recites "The jacket can then be applied around the pericardial surface of the heart and the opposing edges of the opened line secured together after placed on the heart" (col. 6, ln. 48-50). Thus, not only does Krueger fail to teach or suggest the limitation of "wherein the band is configured to leave a gap between the first and second ends," it even teaches away from it.

In rejecting claim 11, the Office Action acknowledges that Krueger does not disclose that the supporting member has a biodegradable element which delays the first and second ends of the band from drawing together (Office Action, pg. 2, 3). However, the Office Action argues that it would have been obvious to one skilled in the art to modify Krueger's invention to provide supporting members having such a biodegradable element (Office Action, pg. 3). The Office Action further points to col. 12, ln. 3-37 of U.S. Patent No. 6,425,856 to

Shapland et al. as an exemplary teaching of this feature (Office Action, pg. 5). In response to the Office Action's arguments, Applicants respectfully submit that the Office Action's proposed modification of Krueger's invention would change its principle of operation and would therefore not be *prima facie* obvious (M.P.E.P. § 2143.01 VI).

As discussed above, Krueger describes a jacket for constraining the heart. An embodiment of the jacket provides a releaseable tensioning mechanism including a spring 30 and an associated length of suture 32 which acts as a drawstring and has a first end 34 and a free end 35 (col. 8, ln. 34 – col. 9, ln. 30). The Office Action interprets this releasable tensioning mechanism or suture/spring assembly as the claimed "supporting spring member" (Office Action, pg. 2). As taught by Krueger, the surgeon applies tension to the jacket on the heart by selectively pulling on the free ends 35 of the drawstring to overcome the bias of the spring 30 (col. 8, ln. 64-67). Such pulling causes the fabric 18 to gather in bunches 50, which are then sutured to secure the degree of tensioning of jacket 10 (col. 8, ln. 67 – col. 9, ln. 8). The drawstrings 32 can then be severed to release springs 30 (col. 9, ln. 9-11).

Thus, the suturing of bundles 50, not the action of the suture/spring assembly, secures the degree of tension to jacket 10. Modifying the suture/spring assembly with a "biodegradable element" would not have an effect of delaying "the first and second ends of the band from drawing together for a preselected time" because the ends of the jacket 10 are drawn together manually by the surgeon and then sutured in place. Modifying the suture/spring assembly to have such a delaying effect would require a substantial reconstruction and redesign of the elements of jacket 10 and its suture/spring assembly as well as a change in the basic principle under which tension in jacket 10 is secured. Such a modification would not be *prima facie* obvious (M.P.E.P. § 2143.01 VI).

For at least the reasons above, Applicants respectfully submit that claim 11, and thus claims 14, 18-20 and 22 which depend therefrom, are allowable over Krueger even before amendment and respectfully request the withdrawal of their obviousness rejections.

Nevertheless, to further clarify the claimed subject matter, independent claim 11 has been amended to recite the limitation "wherein the band is configured to leave a gap between the first and second ends after the first and second ends have been drawn together." Support for

this amendment can be found throughout the original specification, for example, paragraphs 0035, 0037, 0040 and 0042 and Figs. 3A-4C. No new matter has been added. In contrast with this limitation, the jacket of Krueger does not leave a gap between its ends after they have been drawn together.

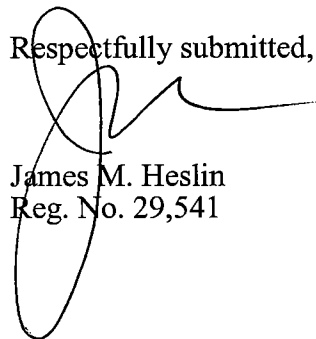
Claims 12 and 13 were rejected under 35 U.S.C. § 103(a) as being obvious over Krueger in view of U.S. Patent No. 6,406,420 to McCarthy et al. (hereinafter "McCarthy"). Claims 12 and 13 depend from claim 11 which is distinguished from McCarthy above. In rejecting claims 12 and 13, the Office Action acknowledges that Krueger fails to disclose that the ends of the jacket of Krueger are located on and adhered to opposite sides of an infarcted region and relies upon McCarthy to make up for this deficiency (Office Action, pg. 4). The Office Action further argues that it would have been obvious to one skilled in the art to modify Krueger's invention by providing ends located on opposite sides of an infarcted region to provide the predictable results of promoting reverse remodeling of the compromised tissue of the infarcted region. Applicants respectfully disagree. Such a modification is contraindicated by Krueger. As explained above, Krueger teaches to draw the ends of its disclosed jacket together so that the jacket completely encircles and constrains the heart, thereby preventing further undesirable circumferential enlargement of the heart. Modifying the jacket of Krueger so that its ends are on opposite sides of an infarcted region changes the principle of operation of Krueger. The modification would therefore not be *prima facie* obvious. Thus, claim 12 and 13 are allowable over Krueger and McCarthy and Applicants respectfully request withdrawal of their obviousness rejections.

**CONCLUSION**

In view of the above amendments and remarks, Applicants believe that all remaining claims, as amended, are clearly in condition for allowance and request that the application be passed to issue at an early date.

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at 650-326-2400.

Respectfully submitted,

  
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